

# CONNECTICUT SENTENCING COMMISSION

## ***Legislative Committee Meeting***

Tuesday, November 29, 2011

10:00 a.m.

Legislative Office Building, Room 1A

Hartford, CT

***Members Present:*** Hon. David Borden (Committee Chair), Michael Lawlor (Commission Vice Chair), Hakima Bey (Representing Michelle Cruz), Robert Farr, Cathy Foley Geib (Representing Bill Carbone), Kevin Kane, Mark Palmer, Richard Sparaco (Representing Erika Tindill), Deborah Sullivan (Representing Susan Storey)

***Also Participating:*** Brian Austin, Andrew Clark, Jason DePatie, Sarah Russell

***Public Attendees:*** Chris Reinhart, Alex Tsarkov, Rick Taff

## **MINUTES**

### **I. MEETING CONVENED**

Justice Borden called the meeting to order at approximately 10:10 a.m.

### **II. APPROVAL OF THE MINUTES FROM THE MEETING OF OCTOBER 4, 2011**

Deborah Sullivan offered an amendment to the minutes. Upon a duly made and seconded motion, the amended minutes were **approved by a unanimous voice vote**.

### **III. PROPOSALS FOR THE CT GENERAL ASSEMBLY'S 2012 LEGISLATIVE SESSION**

#### **A. Classification Working Group**

The working group classified five new misdemeanors carrying a jail sentence of six months or less, addressed the effect of the new classification scheme on probationary periods, and expects to classify the remaining misdemeanors at the working group's next meeting.

#### **B. Provisional Pardons/Certificates of Relief from Barriers**

Sarah Russell updated the committee on the status of New York's Certificate of Relief from Disabilities program. In New York, the Board of Pardons issues 3000 certificates each year. Approximately 1800 certificates are issued by courts every year based on data from 2003. One challenge in determining the exact number of issued certificates each year is that while the Board of Pardons tracks the certificates it issues, the courts do not.

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Kevin Kane pointed out that the committee should consider whether Certificates of Relief from Barriers legislative proposal would place additional stress on probation and the Board of Pardons and Paroles requiring them to hire more staff. Justice Borden then inquired as to whether the proposal changed anything in regard to how the Board of Pardons and Paroles processes applications and Sarah Russell explained it does not. He also pointed out that the current legislative proposal does not affect private employers which was a concern raised at previous committee meetings. Kevin Kane asked how the Commission will oversee the evaluation of the Certificate of Relief from Barriers program to which Justice Borden mentioned that the Commission plans to eventually have full-time staff to perform such functions. After exploring several additional changes to the proposal, the Legislative Committee decided to forward the original proposal to the Full Commission for consideration.

### **C. Legislation for juveniles convicted in adult court to seek sentence modification**

In response to comments made at the last Full Sentencing Commission meeting, Sarah Russell met with Michele Cruz, Kevin Kane, and Hakima Bay. A memo summarizing this meeting is available on the Sentencing Commission's website. Kevin Kane wondered if any of the 185 individuals who would be eligible for a sentence modification hearing had been denied probation. Bob Farr was concerned that some of these individuals could have been released onto parole and returned to prison after violating parole. He explained probation violations are tracked and parole violations are not, which complicates the full history of a person's record. He also had questions as to whether a person would be eligible for a sentence modification hearing if they violated parole over the age of 18. He expressed that if a person violates parole after the age of 18, they should not be eligible for a sentence modification hearing.

Bob Farr questioned whether there is an alternative to the sentence modification hearing utilizing the court system. Kevin Kane mentioned that a potential alternative could be for the defendant and the state to agree on a particular modification arrangement. Kevin Kane also asked to modify language from "the judge shall" be changed to "the judge may" modify a person's sentence upon finding good cause. Justice Borden disagreed with this change, stating that the idea behind this legislative proposal is that if the court finds in its discretion, cause for sentence modification, it will modify the person's sentence. Kevin Kane explained that his concern is that "shall" may create a right to appeal for individuals who are denied sentence modification. Justice Borden explained that the only scenario that a person would have grounds for appeal after a sentence modification hearing is if a judge says on the record that all the requirements for sentence modification are met and does not modify the sentence. He elaborated that the committee cannot allow the "perfect to be the enemy of the good" and that he did not see the use of "shall" as opening the flood gates to sentence modification appeals.

The remaining changes addressed in Sarah Russell's memo were discussed in detail. Justice Borden expressed concern that the new changes were not a compromise and asked if there was consensus on any of the changes to the sentence modification legislative proposal.

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Kevin Kane said he is against the proposal. Hakima Bay would like to keep the language that an individual can have a second opportunity for a sentence modification hearing if authorized by the court at the time of the original hearing after good cause is shown. Deborah Sullivan stated that the Public Defender's Office would like to see a full evidentiary hearing and would like individuals to have multiple opportunities for sentence modification hearings if good cause is shown. Some members suggested that sentence modification could better be addressed by parole and Justice Borden explained he is against that proposal because it would not allow for a full evidentiary hearing with adequate representation.

Justice Borden decided that the committee will go back to the Full Commission with the original proposal for juvenile sentence modification since a compromise could not be reached. He indicated that the changes identified in Sarah Russell's memo could be presented to the Full Commission for additional consideration.

### **IV. OTHER BUSINESS**

No other business was introduced.

### **V. MEETING ADJOURNED**

Meeting adjourned at approximately 11:40 a.m.